IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24852 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THAKKAR MAHENDRABHAI ILLEAS MANUBHAI CHATURBHAI & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR ANAND R PATEL for Petitioner(s) : 1 - 2.
MR HEMANT MAKWANA, ASSTT GOVERNMENT PLEADER for Respondents

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 22/06/2007

ORAL JUDGMENT

1. The petitioner is before this Court being aggrieved by order dated 01.11.2006- Annexure-'G' to this petition, whereby the authority-Collector, Patan

has asked the petitioners to pay premium on the market value of the land on the date of the order. The Collector has stated that as a period of one year has passed since the date of meeting of the Assessment Committee of district level, 12% price rise is to be added to ascertain the market value and 80% of that is to be paid by way of premium. It is however stated that premium is to be paid after deducting the amount already paid and that once the premium is paid, permission stands granted.

The Collector has assessed the market value at the rate of Rs.600/- per Sq. Mtr. for the land in question, which is admeasuring 1820 Sq. Mtrs. The price comes to Rs.10,92,000/-, to that 12% price rise is added, which comes to Rs.1,31,040/-. Total is Rs.12,23,040/- on which premium is to be paid at the rate of 80% i.e. Rs.9,78,432/-. From the said amount already paid, Rs.4,23,696/- is deducted and net amount of Rs.5,54,736/- is ordered to be paid within a period of 21 days.

2. Mr. Patel, learned advocate appearing for the petitioners, relied upon a decision of this Court in the matter of **Bharatbhai Kantilal Jethwa Vs. State of Gujarat and others** reported in **2006 (2) GLH 303**, wherein the Court has specifically held that, 'the market price of the land is to be arrived at as on the date of the application made by the petitioner'. (emphasis supplied)

The learned advocate submitted that besides the order is vitiated on the ground that the petitioners are not heard before passing the order.

3. The learned advocate for the petitioners pointed out that, in fact, the authorities are acting highhandedly in the matter. Earlier, the petitioners were before this Court by way of Special Civil Application No.18070 of 2006, wherein the grievance of the petitioners was that, though the petitioners have paid an amount of Rs.4,23,696/- by way of premium, the authorities are sitting tight over the matter and are not granting N.A. permission to the petitioners.

The learned advocate submitted that, it was during the pendency of that petition, that order under challenge dated 1.11.2006 was passed. The Court disposed of that matter by order dated 2.11.2006, a copy of which is at Annexure-'H' to this petition. The Court recorded thus:

> “3. Today, Mr.M.R. Mengde, learned A.G.P. has placed on record order dated 20.10.2006 passed by the State Government whereby, the State Government has fixed up the premium and, therefore, as such, the petition would not survive and has become infructuous.

> 4. However, Mr.A.R. Patel, learned counsel appearing for the petitioners submitted that the petitioners may have the grievance against the order passed by the Government for addition of 12% increase in the price for no fault on his part and, therefore, he has submitted that the petitioners may be put to the liberty to challenge the order of the State Government in the event the petitioners are so desirous.
>
> 5. Under the above circumstances, the petition is disposed of as having become infructuous. However, the present order shall not prejudice the rights of either side in the event the petitioner is aggrieved by order dated 20.10.2006 passed by the State Government and the challenge is made to the legality and validity of the said order by separate petition.” (emphasis supplied)

4. It is, thereafter, the present petition is filed. The learned advocate submitted that the authorities have passed the order under challenge without according an opportunity of hearing to the petitioners and, therefore, the order is vitiated even on the ground of non-observance of the principle of natural justice.

The learned advocate submitted that, in any case, the order is vitiated as it is against the law

laid down by this Court, wherein it is specifically held that the market price of the land in question is to be considered as on the date of the application and not on the date decided at the sweet will of the authorities.

The learned advocate submitted that the application was made in the year 2003. He submitted that it is clear from letter dated 09.05.2003 of the Collector's office, a copy of which is at Annexure-'A' to the petition, wherein it is specifically mentioned that the market price of the land was required to be considered in the meeting of the Assessment Committee of the district level held on 24.04.2003. The Committee had assessed the market price at the rate of Rs.291/- and thereby the petitioners were asked to pay an amount of Rs.4,23,696/-, which the petitioners had paid on 03.10.2003, a copy of the receipt of that payment is at Annexure-'D' to this petition.

5. Once the market price was assessed, the premium amount was communicated to the petitioners, which was paid, then how the authority can roll back on its earlier decision and ask the petitioners to deposit further amount of Rs.5,54,736/- and that too without hearing the petitioners.

6. Learned advocate Mr. Patel invited attention of the Court to Guideline No.3(15). The learned advocate submitted that the authorities are obliged to issue

N.A. permission within three days from the date of the deposit of the amount of premium.

7. In view of the aforesaid discussion, order dated 1.11.2006 (20.10.2006) is quashed and set aside. The authorities are directed to issue necessary N.A. permission to the petitioners within four weeks from the date of receipt of this order. Rule is made absolute.

(RAVI R. TRIPATHI, J.)

omkar